

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GABRIEL MENDEZ, :

Petitioner, : 04 Civ. 9694 (WHP) (DFE)

-against- : ORDER

WILLIAM R. LAPE, Superintendent, :  
Marcy Correctional Facility, :

Respondent. :

-----X

WILLIAM H. PAULEY III, District Judge:

On December 9, 2004, Petitioner Gabriel Mendez (“Mendez”) filed a petition for a writ of habeas corpus in this Court. In a Report and Recommendation dated September 14, 2005 (“the Report”), Magistrate Judge Douglas F. Eaton recommended that the petition be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. As of this date, neither party has submitted any objection to the Report nor requested an extension of time in which to do so. This Court finds that the Report is not facially erroneous, and affirms and adopts it. Accordingly, it is

ORDERED that this petition for writ of habeas corpus is denied; and it is

FURTHER ORDERED that because Mendez has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c), as amended by the Antiterrorism and Effective Death Penalty Act of 1996. In addition, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438 (1962).

The Clerk of the Court is directed to mark this case closed.

The Clerk of the Court is directed to mark this case closed.

Dated: April 26, 2006  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

*Copies mailed to:*

The Hon. Douglas F. Eaton  
United States Magistrate Judge

Gabriel Mendez  
172 Milford Street, Basement Apt.  
Brooklyn, NY 11208-2416  
*Petitioner Pro Se*

Alyson J. Gill, Esq.  
Assistant Attorney General  
120 Broadway  
New York, NY 10271  
*Counsel for Respondent*